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Attorneys for Defendants Matthew T. Gregory and Melvin Grey

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

MOHAMMED SHAJAHAN ALI,

Plaintiff,

vs.

MATTHEW T. GREGORY, individually
and in his capacity as Attorney General of
the Commonwealth of the Northern Mariana
Islands, and MELVIN GREY, individually
and in his capacity as Director of
Immigration for the Commonwealth of the
Northern Mariana Islands,

Defendants.

CIVIL ACTION NO. 07-0018

**DEFENDANTS' OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT;
CERTIFICATE OF SERVICE**

Hearing: Thursday, 30 August 2007
Time: 9:00 a.m.
Judge: Hon. Alex R. Munson

1 **COME NOW** the Defendants, pursuant to Local Rule 7.1.c.2., through their
2 counsel the Commonwealth of the Northern Mariana Islands (CNMI) Office of the
3 Attorney General (OAG), and oppose Plaintiff's motion pursuant to Federal Rule of Civil
4 Procedure 56 for summary judgment or, alternatively, for a preliminary injunction pursuant
5 to Federal Rule of Civil Procedure 65 (a) (not cited by Plaintiff).

6 7 **I. ARGUMENT**

8 Plaintiff raises case law that was decided decades ago to invalidate federal
9 immigration regulations and other state restrictions on personal conduct in a futile attempt
10 to tar the CNMI regulations with the same brush.

11 Yet Plaintiff overlooks the fact that to this very day, aliens seeking U.S. lawful
12 permanent residence (LPR) due to marriage must satisfy objective criteria to establish
13 entitlement to LPR status. This must be done upon initial application for LPR, and
14 additionally after two years to remove the "condition" on LPR. 8 C.F.R. § 216.4(a)(5).

15 There is no intrusive investigation into the private areas of marriage that the courts
16 have confirmed as sacrosanct generations ago, either by the CNMI nor the contemporary
17 federal regulations upon which the local regs were modeled.

18 The first phase for an immigrant alien spouse seeking LPR is a petition either
19 by a citizen or another LPR. The United States has established criteria where an
20 LPR-petitioner has derived that status from a prior marriage to someone else.

21 There is a presumption against allowing an LPR to petition a spouse within five
22 years of gaining LPR status from a prior spouse. Under 8 C.F.R. § 204.2(a)(1)(i)(C),
23 "The petitioner must establish by clear and convincing evidence that the prior marriage
24 was not entered into for the purpose of evading the immigration laws. Failure to meet
25

1 the ‘clear and convincing evidence’ standard will result in the denial of the petition.” Id.

2 The petitioner

3 should submit documents which cover the period of the prior marriage.
 4 The types of documents which may establish that the prior marriage was not
 5 entered into for the purpose of evading the immigration laws include, but are
 6 not limited to:

- 7 (1) Documentation showing joint ownership of property;
- 8 (2) A lease showing joint tenancy of a common residence;
- 9 (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and
 prior spouse;
- (5) Affidavits sworn to or affirmed by third parties having
 personal knowledge of the bona fides of the prior marital
 relationship.

10 8 C.F.R. § 204.2 (a)(1)(i)(B). See also 8 C.F.R. § 204.2 (a)(1)(iii)(B); 8 C.F.R.

11 § 216.4(a)(5). Plaintiff cites to no successful constitutional challenge to the Department
 12 of Homeland Security inquiring into the bona fide nature of a marriage when an
 13 immigration benefit based on that marriage is applied for, either upon initial application or
 14 removal of the “condition” two years later.

15 Contrary to the core argument of Plaintiff, Pl.’s Mot.. at 6, n.4, the federal
 16 government is not merely looking at a bona fide marriage once. For most couples, there is
 17 the initial application, and then a similar review two years later covering the intervening
 18 years. For those who were married before to someone else, and used that prior marriage
 19 to gain access to the country, there is a five-year period of scrutiny — albeit retroactive at
 20 the time of the initial application based on the second marriage.

21 Plaintiff objects to having “his marriage continue to be investigated and judged by
 22 the Government,” but fails to make any showing that the nature of the CNMI regulations
 23 is substantively different from the constitutionally sound federal requirements, or that the
 24 duration of annual renewal requirements is of a constitutional magnitude beyond the
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1 seven-year scrutiny of some second marriages (five years pre-petition, two years to
2 remove the “condition”) by the federal government.

3 Likewise, Plaintiff has shown no evidence of intrusiveness in the CNMI
4 Regulations, nor set forth a scintilla of evidence of disparate application of the regs.
5 Indeed, while claiming there is no dispute of material fact, he doesn’t quote a single
6 provision of the regulations he disagrees with. The motion consists almost entirely of
7 raising legal questions and factual speculation without tying it into the record, or citing law
8 prohibiting a plethora of privacy invasions without any attempt to tie it to current federal
9 law or the CNMI regulations at issue.

10 Similarly, as to the motion for preliminary injunction, Plaintiff doesn’t even bother
11 to cite the relevant Federal Rule of Civil Procedure, though a case setting forth the
12 balancing test under Rule 65(a) is provided. In conclusory fashion, he claims “irreparable
13 harm” from having “the incidents of his marriage continue to be investigated and judged by
14 the Government,” Pl.’s Mot. at 7, while neglecting to mention that this will only happen
15 once a year, so it will take at least two years to reach the period of the federal regulations
16 that have never succumbed to a challenge such as Plaintiff’s. This is hardly the stuff of
17 which preliminary injunctions are made, and the likelihood of success on the merits
18 deserves even less ink.

19 20 **II. CONCLUSION**

21 The Plaintiff’s motion for summary judgment ignores federal immigration
22 regulations that have proven invulnerable to constitutional challenge, where the federal
23 government engages in the same inquiry as the CNMI into the bona fide nature of a
24 marriage when it is used as the basis for an immigration benefit.
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1 Plaintiff has established neither irreparable harm nor likelihood of success on the
2 merits.

3 The motion for summary judgment and alternate motion for preliminary injunction
4 should be summarily denied.

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6 Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL

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8 Dated: Thursday, 26 July 2007.

/s/

GREGORY BAKA # F0199
Deputy Attorney General

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10 KEVIN A. LYNCH # F0230
Assistant Attorney General

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12 Attorneys for Defendants
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(d), the undersigned declarant states as follows:

1. I am eighteen years of age or older, and I certify that I caused to be served the following documents to the last known address(es) listed below on the date(s) indicated.

**DEFENDANTS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT;
CERTIFICATE OF SERVICE**

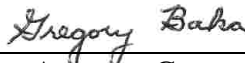
2. As set forth below, this service was accomplished by personal delivery; U.S. Mail; deposit with Clerk of Court (in attorney box), cf. Fed. R. Civ. P. 5(b)(2)(D); or electronic service, see Local Rule 5.1.

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Via Electronic Service

3. I declare under penalty of perjury that the foregoing is true and correct. Executed on Thursday, 26 July 2007.



Deputy Attorney General
Attorney for Defendants